

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS
CGCC-GCA-2023-01-R

HEARING DATE: *(None Scheduled or Requested)*

SUBJECT MATTER OF PROPOSED REGULATIONS:

Surveillance

SECTIONS AFFECTED:

California Code of Regulations, Title 4, Division 18: Section 12396

UPDATED INFORMATION:

The Initial Statement of Reasons (ISOR), as published on April 7, 2023, is included in the file and is hereby incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

PROPOSED ACTION:

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS

ARTICLE 3. MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR CARDROOM BUSINESS LICENSEES

Amend Section 12396. Surveillance.

Section 12396 provides the minimum requirements for the policies and procedures cardroom business licensees must adopt in their standards for surveillance.

Subsection (a) provides minimum surveillance system requirements applicable to cardroom business licensees in all Tiers. In addition to the modifications described below, editorial, nonsubstantive modifications were made to this subsection, which do not have any regulatory effect.

- Paragraph (1) provides, in part, the surveillance system must record with reasonable coverage and clarity the gambling establishment’s critical gambling operation areas and activities as specified.

The originally proposed action added “card values, wagers, game outcomes” to the list of things that must be recorded. The proposed action has been modified to reorganize the list of areas and activities required to be recorded by specifying the “gambling operation” includes “card values, wagers, and game outcomes.” This modification is necessary to provide additional clarity and specificity and to better align with the existing definition of “gambling operation” as defined in Business and Professions Code section 19805, subdivision (q).

Additionally, the originally proposed action provided that "For the purposes of this paragraph, an overhead view of card values, wagers, and game outcomes is acceptable." The proposed action has been modified to specify that this phase applies to "Tier I licensees," which is necessary to resolve any potential ambiguity in the requirements and exemptions applicable to Tiers II through V licensees located in paragraph (2) of subsection (b).

- Paragraph (5) requires the surveillance system to utilize a Digital Video Recorder, Network Video Recorder, or equivalent system that meets specified standards. The proposed action has been modified with nonsubstantive edits to remove repetitive language that is unnecessary.
- Paragraph (8) authorizes Bureau staff, with approval of the Chief, to demand immediate access to the surveillance room and any area of the gambling establishment in which surveillance equipment is installed or maintained or where surveillance video recordings are stored, at any time during the gambling establishment's actual hours of operation. Additionally, paragraph (8) requires cardroom business licensees or their authorized representatives to provide such access to Bureau staff. Furthermore, this paragraph authorizes the Bureau to take custody of and remove from the gambling establishment original video recordings or copies of digital recordings that are required to be made and maintained pursuant to the Act or regulations, limits disclosure of surveillance video recordings by the Bureau, and provides a process for Bureau staff to make copies of surveillance recordings taken into Bureau custody upon reasonable request.
 - Subparagraph (B). Clause "i." provides that digital copies will be a clear representation of the original. Clause "ii." provides the cardroom business licensee will provide the Bureau with any software necessary to view the digital copies or in a format that is acceptable to the Bureau. Nonsubstantive grammatical changes have been made to renumber these clauses to "1." and "2." to make them consistent with the numbering format of other existing Commission regulations.

Additionally, the language "provide the digital copies" has been added in clause 2. to provide additional specificity as to what is required to be submitted to the Bureau in an acceptable format. This is a nonsubstantive grammatical change with no regulatory effect.

Subsection (c) provides specific coverage and recording requirements for all adjoining parking areas owned, operated or otherwise controlled by a Tier III through V cardroom business licensee and are for use by its patrons.

As proposed, the surveillance systems for Tiers III through V cardroom business licensees must include coverage and recording "with sufficient clarity to provide opportunity to obtain a description of vehicles entering and exiting" the adjoining parking areas, as specified. The proposed action has been modified to further specify that to the extent feasible, the coverage and recording of vehicles entering and exiting the parking areas includes the license plates of those

vehicles. The additional language is necessary to provide further clarity and specificity to the phrase “description of vehicles,” consistent with the intent of the originally proposed language and for the reasons stated in the ISOR.

Subsection (d), formerly subsection (e), provides surveillance requirements specific to Tiers IV and V cardroom business licensees.

- Paragraphs (4) and (6) have been modified with several nonsubstantive changes that are editorial in nature and have no regulatory effect.
- Paragraph (4) provides the minimum requirements for the active monitoring of the gambling operations from the surveillance room by a surveillance employee. Additionally, this paragraph provides an exception for Tier IV cardroom business licensees concerning the requirement for at least one surveillance employee to be present in the surveillance room and actively monitoring the gambling operations during all hours of operation, as specified. This exception allows Tier IV cardroom business licensees to utilize a contingency plan previously approved by the Bureau to use a cardroom employee type licensee to fulfill the requirements of this paragraph when a surveillance employee is unavailable due to unforeseen exigencies. This paragraph also contains procedural and timeline requirements for submitting a written request along with the contingency plan to the Bureau for review and approval.
 - Subparagraph (B) provides the contingency plan will be deemed automatically approved if not disapproved by the Bureau in writing within 30 calendar days of the Bureau’s receipt of the request.

This provision has been modified with additional nonsubstantive language to better connect the requirements in paragraph (4) with the provision in subparagraph (B), as it relates to what the contingency plan must state for the Bureau’s approval. Specifically, paragraph (4) and subparagraph (A) require that a contingency plan be submitted to the Bureau in writing, accompanied by a written request for approval, and that the contingency plan indicates an intention to use a cardroom employee type licensee to fulfill the requirements of paragraph (4) when due to unforeseen exigencies a surveillance employee is unavailable. The modifications to subparagraph (B) reiterate these requirements in the context discussing the Bureau’s potential disapproval of a submitted contingency plan. Within the framework of this regulation, it is only for failing to meet one or more of these requirements that a submitted contingency plan would be disapproved by the Bureau. These changes do not materially alter or change any of the requirements of the noticed text and have no regulatory effect.

REQUIRED DETERMINATIONS:

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon: None.

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

BUSINESS IMPACT:

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony:

The proposed action updates existing MICS requirements concerning surveillance at gambling establishments and takes into account the variations in size of different gaming operations. The proposed action makes specified surveillance requirements currently only applicable to Tier V cardroom business licensees (authorized to operate 61 or more gaming tables) additionally applicable to Tier IV cardroom business licensees (authorized to operate 31 to 60 gaming tables). Specifically, this would require a Tier IV cardroom business licensee to establish a separate surveillance unit and provide dedicated cameras for all gaming tables. The amendments also make necessary updates to the requirements concerning the quality and format of video recordings consistent with modern-day digital surveillance technologies. To provide cardroom business licensees enough time to upgrade their existing surveillance systems in compliance with the regulatory changes, these regulations will be submitted to the Office of Administrative Law for final review with a request for a delayed effective date of 12 months from the date of filing with the Secretary of State.

The total statewide cost that businesses may incur to comply with this regulation over its lifetime is estimated to include average initial one-time costs of \$63,340 per small business cardroom and \$161,918 per typical business cardroom in the first year, and average annual ongoing costs of \$29,974 per small business cardroom and \$87,586 per typical business cardroom in all subsequent years.¹ This results in an estimated industry-wide total cost of \$4,849,524 in the first year and an ongoing cost of \$2,404,516 per year thereafter.

These costs will not inhibit a California business from competing with businesses in other states as the gambling industry does not cross state lines and the amounts involved are not significant enough to affect industry competitiveness. Furthermore, the proposed changes would make the surveillance standards for California cardrooms consistent with the surveillance requirements of similar-sized gaming facilities found in other states, including Nevada and New Jersey.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed action mandates the use of specific technologies or equipment. Performance standards were considered and incorporated in the regulations where appropriate, such as requiring the use of cameras that have the ability to monitor and record with sufficient clarity.

¹ Minor updates have been made to the average initial and ongoing costs originally identified in the Initial Statement of Reasons per recent amendments to the North American Industry Classification System Code section 713210 (effective March 17, 2023). These updates do not result in a change to the total industry-wide initial and ongoing costs of the regulation, but resulted in one additional cardroom being classified as a small business for the purpose of the fiscal estimates. See *Impact on Jobs/New Businesses* section (below) for additional details.

However, the capabilities of modern day video surveillance in controlled gaming are inherently dependent on the use of specific digital technologies and equipment to better prevent criminal activity from taking place and to ensure the quality of recorded evidence is sufficient for law enforcement agencies to be able to conduct thorough investigations. For this reason, the proposed regulatory amendments include requiring a sufficient number of cameras with the ability to pan, tilt, and zoom in on games being conducted as well as the use of digital recording and storage equipment, which has the ability to provide high-resolution copies of recordings without any loss in quality (unlike analog based systems).

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the federal Small Business Administration (SBA) definition of a small business was utilized. An average annual gross gaming revenue of \$34 million per year was used as the threshold², as specified in the North American Industry Classification System Code section 713210 and referenced by the SBA in Section 121.201 of Title 13 Part 121 of the Electronic Code of Federal Regulations. Cardroom business licensees having a three-year average annual gross gaming revenue of no more than \$34 million from 2017 to 2019 were identified as small businesses. Due to mandatory closures resulting from the COVID-19 pandemic, 2019 was the last full year of operation; information from 2020 and 2021 was not used.

The proposed action may result in a small increase in the number of surveillance jobs available at Tier IV cardroom business licensees due to requiring Tier IV cardroom business licensees to establish a separate surveillance unit that is independent and apart from the security department and staffed with personnel that have no other gambling-related duties. However, the increase in jobs is difficult to quantify because many Tier IV cardroom business licensees already meet the proposed requirement. Additionally, due to the limited number of gaming tables a Tier IV cardroom business licensee is allowed to operate (31 to 60 gaming tables), the statewide increase in new jobs would not be significant.

HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of the controlled gambling industry. Strengthening the capabilities of cardroom surveillance and security controls will provide an additional deterrent against illegal activity, better protect patron assets, and better assist the Bureau and other law enforcement agencies in conducting thorough investigations.

WORKER SAFETY:

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

² Pursuant to recent amendments to the North American Industry Classification System Code section 713210 (effective March 17, 2023), the threshold of \$30 million in gross gaming revenue per year originally used to identify small businesses in the Initial Statement of Reasons, has been updated to \$34 million.

STATE’S ENVIRONMENT:

It has been determined that the proposed action will not affect the state’s environment because it does not pertain to environmental issues.

BENEFITS OF PROPOSED REGULATION:

The proposed amendments would add Tier IV cardroom business licensees to specified surveillance requirements previously reserved only for Tier V cardroom business licensees; namely requiring a separate surveillance unit to be staffed during all hours while gambling operations are taking place and dedicated surveillance cameras at all gaming tables. Doing so will strengthen internal controls for Tier IV cardroom business licensees and provide an extra layer of safety and security. Adding Tier IV cardroom business licensees to the more stringent surveillance requirements previously reserved for Tier V cardroom business licensees will make California’s standards similar to those found in other states, including Nevada and New Jersey. For all cardroom business license Tiers, requiring digital surveillance recordings be captured, recorded, copied, and stored with sufficient clarity will better assist the Bureau and local law enforcement in conducting investigations. Further, the proposed action will benefit cardroom business licensees in further safeguarding their assets, protecting patrons and their property, while maintaining the integrity of controlled gambling. The proposal will also increase public trust in gaming throughout California.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed. No reasonable alternative would be as effective as and less burdensome to affected private persons than the proposed action, nor would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected: No reasonable alternative has been developed or otherwise identified and brought to the attention of the Commission. The Act requires the Commission to “prescribe” regulations for cardroom business licensees to adopt to exercise effective control over their internal fiscal and gambling affairs, which must include, but not be limited to, requirements for the safeguarding of assets and revenues and the provision of reliable records, operations, and events, including reports to the Bureau (Business and Professions Code section 19841, subdivision (h)). Additionally, the Act requires cardroom business licensees to maintain security controls over the gambling premises and all operations therein related to gambling, which are subject to the approval of the Commission (Business and Professions Code section 19924).

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following public comments/objections/recommendations were made regarding the proposed action during the public comment periods:

I. 45-DAY WRITTEN COMMENT PERIOD

The California Gambling Control Commission (Commission) received the following written comments/objections/recommendations regarding the text of the proposed action during the 45-day written comment period that commenced April 7, 2023, and ended May 22, 2023:

A. AMEND SECTION 12396. SURVEILLANCE.

This section requires cardroom business licensees to adopt specified minimum policies and procedures concerning surveillance. The requirements increase throughout this section based on the relative size (Tier) of the gambling establishment, which is determined by the number of tables the cardroom business licensee is authorized to operate. Existing Section 12380(d) defines the five different license Tiers as follows:

- Tier I licensee – a cardroom business licensee authorized to operate one to five tables.
- Tier II licensee – a cardroom business licensee authorized to operate six to ten tables.
- Tier III licensee – a cardroom business licensee authorized to operate eleven to thirty tables.
- Tier IV licensee – a cardroom business licensee authorized to operate thirty-one to sixty tables.
- Tier V licensee – a cardroom business licensee authorized to operate sixty-one or more tables.

1. General comments made on the proposed regulations not specific to any subsection.

- a. Alan Titus, representing Artichoke Joe’s:** Mr. Titus expresses that although the ISOR states the proposed action seeks “to better align with the requirements found in other similar states,” he questions whether states with banked games are similar to California, which does not allow banked games. Mr. Titus notes that Washington State has surveillance regulations that differ for casinos that offer banked games versus those that do not offer banked games. He believes that states allowing banked games may have surveillance regulations that are intended to protect the public from being cheated by the casino/house, which is both the player and the one conducting the surveillance. In California, the house is a neutral party that does not play in the games, and according to Mr. Titus, those considerations from other states would be absent.

Lastly, Mr. Titus notes that the summaries of other states’ regulations provided in the ISOR are not focused on the particular amendments proposed—some of the summaries omit information pertinent to the proposed action while other summaries are not germane to the proposed action.

Response: This comment was rejected. Regarding the comment that the ISOR indicates the purpose of the proposed action is “to better align with the requirements found in other similar states,” the purpose of the proposed action is not solely to align with the requirements of other similar states. The ISOR also states that “[t]he proposed action has been prepared to strengthen and update the surveillance requirements for all cardroom business licensees...to better align with modern-day digital surveillance technologies...” Furthermore, the ISOR provides that the proposed action will enhance the capabilities of security and investigations to “better

protect the health, safety, and welfare of the public, maintain the integrity of California’s controlled gaming industry, and better assist the Bureau [of Gambling Control] and other law enforcement agencies in conducting thorough investigations.” The ISOR language excerpted in the comment letter, “to better align with... the requirements found in similar states,” is not comprehensive and does not represent the full explanation of the purpose of the proposed action that is reflected in the ISOR. Additionally, the indication in the ISOR that the proposed action will better align California’s surveillance requirements with those of other states in no way means the intent of the proposed action is to implement requirements identical to those found in similar states.

Moreover, the supporting documents of the proposed regulations (ISOR and Notice of Proposed Action) include a clear and concise summary of existing laws and regulations that directly relate to the proposed rulemaking.

2. **Subsection (a), paragraph (1)** [page 1, line 15 of the proposed regulation text] requires all cardroom business licensees (Tiers I through V) to install and maintain on-site in the gambling establishment, a surveillance system with video recording and closed circuit television (CCTV) monitoring capabilities. This provision also provides a list of areas and activities required to be recorded with reasonable coverage and clarity, which includes the following: the gambling operation, the payment of player drop fees, card values, wagers, game outcomes, the collection of drop boxes, the drop count processes, cage and cashier activities, gambling equipment storage areas, except for furniture storage areas, and the interior of gambling establishment entrances and exits. Language in the provision specifies that for the purposes of this paragraph, an overhead view of the card values, wagers, and game outcomes is acceptable, and exempts demonstration and instructional tables from the requirement when cash or prizes are not involved. Lastly, this paragraph specifies requirements concerning video recording date and time generators and remote access to the on-site surveillance system.
 - a. **Alan Titus, representing Artichoke Joe’s:** Mr. Titus expresses that the general phrase “the gambling operation,” which is required by the existing regulation to be recorded by the surveillance system, is vague and ambiguous. Mr. Titus indicates it is unclear whether the specific list of items that follow “the gambling operation” in the sentence are intended to define that phrase in whole or in part, or if the additional items are duplicative. Additionally, Mr. Titus expresses the surveillance system

coverage requirements of all other states are much clearer and do not use a similar general phrase, summarizing the related laws of other states as follows:

- Nevada: Regulation 5, Surveillance Standards for Nonrestricted Licensees.

Standard 3: Card Games. “The surveillance system...must...record each game area with sufficient coverage to view patrons, dealers, and activities on the card game surfaces.”

Standard 6: Cage and Vault. “The surveillance system...must...record a general overview of activities occurring in each casino cage and vault area with sufficient clarity to identify employees within the cage and patrons and employees at the counter areas.”

Standard 7: Count Rooms. “The surveillance system...must...record the soft count room, including all doors to the room, all drop boxes, safes, and counting surfaces, and all count team personnel.”

Standard 8: Security offices. “The surveillance system...must...record, in both audio and video, the area of any security office or other room in which persons may be detained by casino security personnel.”

- New Jersey: NJAC, Title 13, Ch. 69D, Sec. 1.10(b).
“The CCTV system shall ... (1) monitor ... i. The gaming conducted at each gaming table...and the activities in the casino...pits... iii. The operations conducted at and in the cashiers’ cage... vii. The count processes conducted in the count rooms. viii. The movement and storage of cash, gaming chips, plaques, drop boxes, ... ix. The entrances and exits to the casino...count rooms and all critical locations ad [sic] defined in NJAC 13:69D-2-1.”
- Louisiana: Ch. 33, Sec. 3301.
“C. Cameras shall monitor... 1. the operations conducted at the fills and credit area of the cashier's cage.” D. Cameras...shall monitor ... 2. the count processes conducted in the count rooms; 3. the movement of cash, chips, drop boxes...within the casino and any area of transit of uncounted tokens, chips, cash and cash equivalents; 4. any area where cash or cash equivalents can be purchased or redeemed.”
- Mississippi: Rule 6.4 Surveillance Systems: Count Rooms and Cage.
“(a) [The surveillance system shall possess] the capability to monitor and record clear unobstructed views of all areas and transactions within:
1. The hard count room and any area where uncounted coin is stored during the drop and count process, including walls, corners, doors, scales, wrapping machines, coin sorters, vaults, safes, and general work surfaces.
2. The soft count room, and any area where uncounted currency is stored during the drop and count process, including walls, corners, doors, drop

boxes, vaults, safes, and counting surfaces. All counting surfaces must be transparent; and

3. The casino cage, including customer windows, employees' windows, cash drawers, vaults, safes, counters, chip storage, and fill windows.

(b) All transaction [sic] within the hard count room and soft count room must be recorded with sufficient clarity to permit identification of each employee and his movements, and to permit identification of all currency, coins, and paperwork.

(c) All transactions within the casino cage must be recorded with sufficient clarity to permit identification of each employee and his movements, and to permit identification of all currency, coins [sic] and paperwork.

(d) The surveillance department shall follow and record all gaming revenue drops, including emergency drops, and all revenue counts...At a minimum this shall include coverage or [sic] the removal and transport of the revenue from the gambling device to the secure location on the casino floor and transportation of the revenue to the count room.”

Rule 6.5 Surveillance Systems: Table Games and Card Rooms

(a) The surveillance system “shall possess the capacity to monitor and record clear and unobstructed views of all active table games or card table surfaces, including table bank trays, with sufficient clarity to permit identification of all chip, cash, dice and card values and the outcome of the game.

(b) The surveillance system “shall possess the capability to monitor and record clear and unobstructed views of the following:

1. All table game and card room areas with sufficient clarity to permit identification of all dealers, patrons, spectators and pit personnel; and

2. All drop boxes and table numbers.

3. Simultaneous coverage of both the table game area and the table game surface.

(c) The surveillance system shall monitor and record clear and unobstructed views of “the table game surface” and “all card room or podium banks, including any drawers, cabinets and safes contained therein.”

- Washington: 230-15-275 (for Class F, not house banked, card games).
“(2) Class F licensees must have a CCTV that views: (a) All gambling at each table including at least, the: (i) Cards; and (ii) Wagers; and (iii) Chip tray; and (iv) Drop box openings; and (v) Table number; and (vi) Players; and Dealers; and (b) When the count is being conducted, at least the: (i) Count table; and (ii) Floor; and (iii) Drop boxes; and (iv) Drop box storage shelves/cabinets.”

Mr. Titus goes on to express that the existing phrase “the gambling operation,” violates the requirements of Government Code section 11349.1 and should be clarified.

Lastly, Mr. Titus notes that the proposed addition of the requirement for all cardroom business licensees to record “card values, wagers, [and] game outcomes” is

duplicative and unnecessary because the same requirement for Tiers II through V exists in paragraph (2) of subsection (b).

Response: This comment was accepted in part. The Commission proposes the following clarifying amendments to paragraph (1) of subsection (a):

(1) ...The surveillance system must record with reasonable coverage and clarity, at a minimum, the gambling operation, including card values, wagers, and game outcomes, the payment of player drop fees, ~~card values, wagers, game outcomes~~, the collection of drop boxes, the drop count processes, cage and cashier activities, gambling equipment storage areas, except for furniture storage areas, and the interior of gambling establishment entrances and exits. For the purposes of this paragraph, an overhead view of card values, wagers, and game outcomes is acceptable for Tier I licensees. This paragraph does not apply to demonstration or instructional tables, when cash or prizes are not being wagered, won or lost...

Commission staff notes that the existing regulation's use of the term "gambling operation" is not vague and ambiguous because it is defined within the Gambling Control Act (Act)³ as follows:

Business and Professions Code section 19805, subdivision (q):
“(q) ‘Gambling operation’ means exposing for play one or more controlled games that are dealt, operated, carried on, conducted, or maintained for commercial gain.”

The list of areas and activities required to be recorded with reasonable coverage and clarity, including the proposed addition of “card values, wagers, game outcomes,” provides additional specificity to the use of the term “gambling operation” in the existing regulation. Commission staff's proposed amendment to reorganize the list of areas and activities required to be recorded provides additional clarification.

The addition of “card values, wagers, and game outcomes” in paragraph (1) of subsection (a) is not duplicative of the similar requirement in paragraph (2) of subsection (b). It is important to note that the requirements in subsection (a) apply to all Tiers (I through V), while the requirements in subsection (b) apply only to Tiers II through V. Therefore, the addition of “card values, wagers, and game outcomes” in paragraph (1) of subsection (a) ensures that the requirement to record these things with reasonable coverage and clarity is applicable to Tier I cardroom business licensees. Additionally, the requirements in subsection (b) are more stringent than those applicable to all Tiers in subsection (a). Specifically, subsection (b) requires “a *sufficient number of cameras dedicated to gambling tables* to be capable of viewing and recording, with reasonable coverage and clarity, patrons, dealers, wagers, card values, and game outcome *at each table*” (emphasis added), while subsection (a) requires specified areas and activities to be recorded. Commission staff's proposed

³ Business and Professions Code, Division 8, Chapter 5, section 19800 et seq.

amendment to paragraph (1) of subsection (a) to specify that the phrase “an overhead view of card values, wagers, and game outcomes is acceptable” applies to Tier I licensees provides additional clarity to resolve any potential ambiguity with the requirements and exemptions applicable to Tiers II through V licensees in paragraph (2) of subsection (b).

3. Subsection (a), Paragraph (4) [page 2, line 7 of the proposed regulation text] applies to all cardroom business licensees and provides required policies and procedures concerning daily inspections and instances of malfunctioning surveillance equipment.

a. Alan Titus, representing Artichoke Joe’s: Mr. Titus expresses that it is unclear how the requirement that reasonable efforts be made within 72 hours to repair or replace malfunctioning equipment interacts with the proposed requirement to prohibit gaming in an “area” if required surveillance ceases to be available. Specifically, Mr. Titus indicates that it is unclear whether the proposed requirement to close an area applies only after the 72 hours or as soon as the malfunction is discovered. Mr. Titus adds that no other state requires shutdown of an area due to malfunctioning surveillance equipment without providing alternatives, summarizing the related requirements of other states as follows:

- Nevada makes a distinction between dedicated cameras and other cameras. Nevada regulations provide that if a dedicated camera malfunctions, “the licensee must immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity. If other security measures are taken, the licensee must immediately contact the enforcement division who will determine whether the other security measures are adequate.”⁴ As for non-dedicated cameras, while reasonable effort must be made to repair the system within 72 hours, only after a week is the licensee required to notify the division of the malfunction.⁵
- New Jersey regulations provide that the Division of Gaming Enforcement shall be notified immediately of any equipment failure.⁶
- Mississippi differentiates between dedicated coverage malfunctions and non-dedicated coverage malfunctions. For non-dedicated coverage malfunctions, Mississippi Gaming Regulations allow 24 hours to make repairs and then require closure of the area.⁷
- Louisiana requires immediate replacement of faulty equipment and if that is not possible, allows for live monitoring.⁸

⁴ NVGC Regulation 5, § 2.010(15)

⁵ NVGC Regulation 5, § 2.010(14)

⁶ NJAC, Title 13, Chapter 69(D), Section 1.10(h)(8)

⁷ MGC, Title 13, Part 3, Chapter 6, Rule 6.9

⁸ LAC, Title 42, Part III, Chapter 33, § 3315(C)

- No requirements regarding equipment malfunction were found for Washington.

Mr. Titus expresses that the proposed requirement does not align with the purpose of the proposed action stated in the ISOR, which is “to better align with... the requirements found in similar states.” Rather, the proposed requirement is stricter than the requirements of these five states even though those states allow banked card games and California does not. For these reasons, Mr. Titus indicates the proposed regulation is stricter than necessary and should offer cardrooms other alternatives.

Response: This comment was rejected. Paragraph (4) contains two distinct requirements. The first sentence provides the length of time (within 72 hours of discovery) in which reasonable efforts must be made to repair or replace malfunctioning equipment. The second sentence specifies that, if at any time, the surveillance system ceases to be able to record any area that is required to be recorded (except parking lots), the area must not be used for any activity subject to the surveillance requirements until the surveillance system is able to record again. The phrase, “if at any time” in the second sentence of paragraph (4) specifies that if a malfunction occurs that results in inability of the surveillance system to record any area of the gambling establishment required to be recorded (except parking lots), the area cannot be used for activities subject to surveillance requirements, whether this occurs during the 72-hour period following discovery of the malfunctions or afterward. However, if the surveillance system has other cameras that can record the area in accordance with the requirements, the area is not required to be closed.

Regarding the comparison to other states’ related requirements, it is notable that the comment contains only a portion of Louisiana’s requirement that allows for the live monitoring of gaming when surveillance equipment has malfunctioned. The subsequent subsection⁹ provides, “The division shall determine if gaming should continue with live monitoring and shall have authority to cease gaming operations not monitored by the surveillance system.”

Moreover, live monitoring is no substitute for video evidence when it comes to providing law enforcement the ability to conduct thorough investigations and maximizing protection of the public and cardroom assets.

Regarding the comment that the proposed requirement in this paragraph does not align with the purpose of the proposed action stated in the ISOR, which is stated by Mr. Titus as, “to better align with... the requirements found in similar states,” please see the related response to Comment I.A.1.a.

- 4. Subsection (b), paragraph (1)** [page 4, line 12 of the proposed regulation text] applies to Tiers II through V cardroom business licensees and requires the surveillance system to

⁹ LAC, Title 42, Part III, Chapter 33, § 3315(D)

have dedicated cameras to monitor and record entrances and exits with sufficient clarity to afford reasonable opportunity to identify any person entering and exiting.

- a. Alan Titus, representing Artichoke Joe’s:** Mr. Titus expresses that the proposed addition to this paragraph to require the system to record entrances and exits “with sufficient clarity to afford reasonable opportunity to identify any person entering and exiting” is not clear, nor is it found in any other state.

Specifically, Mr. Titus indicates the meaning of “identify” is not clear because surveillance systems cannot identify a person by name. Mr. Titus expresses that the term “to identify” in this context may mean “to identify by appearance, by dress, by stature, sex, race, etc. so that the person can be recognized if they play or conduct transactions in various places around the room,” and opines that if that is what is meant by the regulation, it should be made clear.

Mr. Titus notes that various conditions can restrict the ability to identify a player entering the establishment, such as what the person is wearing or when a group of people entering obstruct the view of individuals behind them.

Mr. Titus goes on to express that the language in the ISOR conflicts with the regulation text because the ISOR states that the requirement “ensur[es]...that every person entering and exiting can be clearly identified,” but the text of the regulation only requires a “reasonable opportunity to identify” players, not ensure identification.

Further, Mr. Titus indicates that although the ISOR states the goal of the regulation is “to better align with...the requirements found in similar states,” there is no support for the proposed addition, as none of the other states’ regulations that are summarized in the ISOR have a similar requirement for the surveillance of entrances and exits to “afford reasonable opportunity to identify” customers. Mr. Titus summarizes the lack of related requirements in other states as follows:

- “Washington doesn’t require surveillance of entrances and exists for non-banked cardrooms.
- Mississippi doesn't require surveillance of banked cardroom entrances and exists.
- Nevada does not require surveillance of entrances and exits.
- New Jersey and Louisiana both require surveillance of entrances and exits but their regulations are similar to the current language, and do not include any requirement like the proposed addition.”

Response: This comment was rejected. Regarding the comment that the proposed requirement in this paragraph does not align with the purpose of the proposed action stated in the ISOR, which is stated by Mr. Titus as, “to better align with... the requirements found in similar states,” please see the related response to Comment I.A.1.a.

Mr. Titus opines that the word “identify” is not clear; however, Nevada has similar clarity standards that use this term concerning the surveillance recordings of other areas. Specifically, NVGC Regulation 5, Standard 2, requires the surveillance system of all licensees operating three or more table games to have the capability to monitor and record each table game area, “with sufficient clarity to identify patrons and dealers.” Further, NVGC Regulation 5, Standard 12, requires digital video recording equipment and systems to have visual resolution of sufficient clarity to meet all published Surveillance Standards (e.g., identifying patrons, dealers, other employees, wagers, game outcomes, etc.).

Further, the proposed text of the regulation does not mandate every person entering and exiting the gambling establishment must be identified by the surveillance cameras, nor does it mandate how such persons must be identified (e.g., by their name, face, etc.). Rather, the proposed action modifies the existing requirement to ensure the system’s video camera clarity is sufficient “to afford reasonable opportunity to identify” such persons, meeting the intended performance goal of the regulation while ensuring compliance is achievable.

5. **Subsection (b), paragraph (2)** [page 4, line 15 of the proposed regulation text] applies to Tiers II through V cardroom business licensees and requires the surveillance system to have a sufficient number of cameras dedicated to gambling tables for viewing and recording patrons, dealers, wagers, card values, and game outcomes at each table.
 - a. **Alan Titus, representing Artichoke Joe’s:** Mr. Titus expresses that the requirement that the surveillance system record "wagers, card values, and game outcome" is duplicative of proposed language for subsection (a)(1), and is thus rendered obsolete and unnecessary.

Response: This comment was rejected. Please see the related response to Comment I.A.2.a.

6. **Subsection (d) [formerly subsection (e)], paragraph (1)** [page 5, line 3 of the proposed regulation text] requires Tiers IV and V cardroom business licensees to establish a surveillance unit that is separate and apart from the security department, consisting of staff independent from the security department and who have no other gambling-related duties.
 - a. **Alan Titus, representing Artichoke Joe’s:** Mr. Titus objects to making paragraph (1) of subsection (d) [formerly subsection (e)] applicable to Tier IV cardrooms with its current wording.

First, Mr. Titus considers the phrase “gambling-related duties” vague and ambiguous. Mr. Titus expresses that this phrase is undefined and there is no guidance provided in the ISOR for determining with any specificity what “gambling-related duties” might include. Mr. Titus goes on to express that the ISOR states that a general purpose of the application of this section to Tier IV cardrooms is to “require[] active monitoring

of gambling operations” and to prevent there being “unattended surveillance systems.” As such, Mr. Titus believes the intent of the requirement is directed at surveillance employees whose duties are to monitor surveillance in real time; however, Mr. Titus indicates the regulation is unclear.

Further, Mr. Titus expresses that depending on the meaning of “gambling-related duties,” the prohibition against the head of surveillance having “other gambling-related duties” serves no purpose and defeats good purposes. With respect to Artichoke Joe’s, while they take no issue with requiring non-managerial surveillance personnel to have no other gambling-related duties, requiring that the manager of the surveillance unit have no other gambling-related duties is problematic. This is because since 2011, the cardroom’s surveillance manager has taken on other various management and upper management roles (e.g., Facilities Manager, Interim Company President) and currently serves as Special Assistant to the President in addition to being the Surveillance Manager and Facilities Manager. According to Mr. Titus, if the prohibition on the head of the surveillance unit having “gambling-related duties” includes a prohibition on this individual having cardroom management duties, the proposed regulation defeats good control instead of serving it.

Mr. Titus goes on to express that the ISOR does not state any reason for prohibiting the head of surveillance in a Tier IV cardroom from serving in a broader management role. Further, Mr. Titus indicates that when this rule was first proposed for Tier V cardrooms in June 2009, the ISOR for Section 12396 provided no reason for this rule.

Additionally, Mr. Titus opines that the requirement is inconsistent with and exceeds the other states’ requirements summarized in the ISOR because none of the other states prohibit a surveillance manager from performing other gambling-related duties. According to Mr. Titus:

- Nevada does not have any similar regulation, which is most significant because Nevada still sets the standard for gambling regulation.
- New Jersey requires that “Surveillance department employees assigned to monitor the activities shall be independent of all other departments.”¹⁰ This would not cover the department manager.
- Mississippi prohibits the “individual responsible for the operation of the Surveillance Department [from] sharing any duties with the individual responsible for the operation of the Security Department.” The reason is unclear, but it would not prevent the head of Surveillance from serving as head of Facilities or from assisting the President.
- Louisiana's prohibition applies only to employees with monitoring duties and not to department managers.
- Washington State requires the establishment of separate departments but allows the general manager to also perform the duties of a gambling operations department manager, which is similar to the role of Assistant to the President at Artichoke Joe’s.

¹⁰ NJAC, Title 13, Chapter 69(D), Section 1.10(l)(1)

Mr. Titus suggests this subsection be amended in accordance with one of the following alternatives:

- (1) Amend proposed subsection (d)(1) [formerly subsection (e)(1)], to prohibit the head of the surveillance unit from having other “non-management gambling-related duties;” or,
- (2) Keep existing subsection (d) applicable to Tier IV cardrooms and replace the current requirements therein with the requirements currently proposed for paragraphs (2) through (7) of subsection (d) [formerly subsection (e)]. Effectively, this alternative would continue to exempt Tier IV cardrooms from the requirement to establish a dedicated surveillance unit that is separate and apart from the security department, staffed with a manager and employees that have no other gambling-related duties.

Response: This comment was rejected. The phrase “gambling-related duties” used in proposed subsection (d)(1) [formerly subsection (e)(1)] is not vague and ambiguous. The existing requirement has applied to Tier V cardrooms for well over a decade and the term “gambling-related” is used within the Act and throughout Commission regulations to describe various activities, issues, and duties associated with gambling.

Requiring Tier IV cardrooms to maintain an independent surveillance unit comprised of employees and managers that have no other gambling-related duties, strengthens the cardroom’s internal control over surveillance and security. Segregating the duties of surveillance unit employees, including the manager, reduces the potential for those employees to commit and conceal critical errors or fraudulent activity. Having trained and experienced employees solely responsible for overseeing cardroom surveillance better protects the health, safety, and general welfare of the cardroom and the public by aiding and preserving the integrity of the controlled gambling industry.

Although the commenter indicates that none of the other states prohibit a surveillance manager from performing other gambling-related duties, it is notable that other states have requirements in place that appear intended to similarly separate potentially incompatible duties. For instance, Louisiana requires surveillance department employees to be independent of all other departments and to report directly to the general manager or higher corporate official, and prohibits employees assigned to monitoring duties in the surveillance room from being concurrently employed in any other capacity by that licensee or any affiliate.¹¹ Therefore, Louisiana gambling establishments likely do not have “surveillance department managers” or “surveillance heads” who could serve concurrently in another capacity. Additionally, New Jersey requires casino licensees’ systems of internal controls to ensure “the segregation of incompatible functions so that no employee is in a position both to

¹¹ LAC, Title 42, Part III, Chapter 33, § 3304(A) and (b)

commit an error or to perpetuate a fraud and to conceal the error or fraud in the normal course of his or her duties.”¹²

Regarding the comparison to other states’ related requirements, please also see the response to Comment I.A.1.a.

Further, regardless of other states’ requirements, the Act provides the Commission with broad authority to implement the requirements of the Act for the protection of the health, safety, and welfare of the public.¹³ The proposed action is consistent with the broad legislative findings and declarations provided in the Act. Specifically, Business and Professions Code section 19801 provides, in part:

19801.

The Legislature hereby finds and declares all of the following:

...

(f) It is not the purpose of this chapter to expand opportunities for gambling, or to create any right to operate a gambling enterprise in this state or to have a financial interest in any gambling enterprise. Rather, it is the purpose of this chapter to regulate businesses that offer otherwise lawful forms of gambling games.

(g) Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

(h) Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture and distribution of permissible gambling equipment.

...

Furthermore, the Commission is authorized to adopt regulations governing the operation of gambling establishments in California and to the extent appropriate, must take into consideration the operational differences of large and small establishments.¹⁴ Additionally, the Commission is mandated to adopt regulations prescribing minimum procedures for adoption by cardroom business licensees to exercise effective control over their gambling affairs, including requirements for the safeguarding of assets and revenues.¹⁵ The Act also requires cardroom business licensees to maintain security controls over the gambling premises and all operations

¹² NJAC, Title 13, Ch. 69D, Sec. 1.11(a)(2)

¹³ Business and Professions Code section 19971

¹⁴ Business and Professions Code section 19840

¹⁵ Business and Professions Code section 19841(h)

therein related to gambling, and specifies those security controls are subject to the approval of the Commission.¹⁶

II. 15-DAY WRITTEN COMMENT PERIOD

There were no comments, objections, or recommendations received during the 15-day written comment period that commenced December 5, 2023, and ended December 20, 2023.

III. COMMENT RECEIVED OUTSIDE OF PUBLIC COMMENT PERIODS

The Commission received the following written comments/objections/recommendations regarding the text of the proposed action outside of any public comment period:

- McMillen, Andreia. Department of Justice, Bureau of Gambling Control. November 15, 2023. Via email only.

There were no further comments, objections, or recommendations received regarding the proposed action either within or outside any of the public comment periods.

¹⁶ Business and Professions Code section 19924